

48A C.J.S. Judges § 191

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

A. General Considerations

§ 191. Right to compensation—Forfeiture and waiver

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(1)

A judge may forfeit or waive the right to compensation as by neglecting to claim it for an unreasonable length of time, or by voluntarily surrendering the office, or by accepting another office.

A judge may forfeit the right to a salary by neglecting to claim it for an unreasonable length of time after the services are rendered¹ or by voluntarily surrendering the office to another claiming title thereto under color of right and suffering such other person to discharge the duties and receive the salary of the office so as to become a judge de facto.² A judge may also forfeit his or her salary by accepting another office if by such acceptance the judge vacates office.³ A judge is not deprived of the right to claim a statutory salary because of the judge's failure to compel the proper officials by legal process to appropriate funds.⁴ Furthermore, a judge does not waive or forfeit the right to judicial compensation by continuing to practice law and receive income during a certain period after the term of office commences while his or her ascension to the bench is delayed because of an election contest.⁵

Also, it has been held that a judge does not waive a right to the full amount of the salary to which the judge is entitled by merely accepting without protest a smaller amount.⁶ However, there is also authority to the contrary,⁷ and receiving a reduced amount pursuant to an express agreement therefor may constitute a waiver and estoppel.⁸

Effect of suspension.

When a judge has been lawfully suspended from office, the judge is not entitled to the compensation incident to the office during the period of the suspension⁹ although the judge is later reinstated.¹⁰ The mere fact that proceedings for removal are pending

against a judge who was not suspended does not, however, authorize the court, in the absence of constitutional authority, to deprive the judge of a salary.¹¹ On the other hand, it has been held that a judge's salary may be conditionally suspended pending the final determination of the proceedings for the judge's removal from office.¹²

Effect of illegal dismissal.

Under statutes so providing with respect to municipal officers or employees, a judge whose removal was judicially declared to be illegal is entitled to recover the salary of the office for the period covered by the illegal dismissal.¹³

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Footnotes

- 1 N.Y.—*Pisciotta v. City of New York*, 275 A.D. 966, 90 N.Y.S.2d 706 (2d Dep't 1949), judgment aff'd, 300 N.Y. 664, 91 N.E.2d 323 (1950).

Tenn.—*Obion County v. McKinnis*, 211 Tenn. 183, 364 S.W.2d 356 (1962).

As to forfeiture of office, see § 63.
- 2 Wis.—*State v. Hastings*, 10 Wis. 525, 1860 WL 4565 (1860).

As to right of judge de facto to compensation, see § 211.
- 3 N.Y.—*Furgueson v. La Guardia*, 171 Misc. 270, 11 N.Y.S.2d 598 (Sup 1939), order aff'd, 257 A.D. 1048, 13 N.Y.S.2d 647 (2d Dep't 1939), order aff'd, 281 N.Y. 678, 23 N.E.2d 14 (1939).

As to matters creating vacancy, generally, see §§ 72 to 78.
- 4 Okla.—*Board of Com'rs of Caddo County v. Lawrence*, 1938 OK 173, 182 Okla. 485, 78 P.2d 669 (1938).

As to necessity of appropriation, generally, see § 209.
- 5 Pa.—*Reed v. Sloan*, 475 Pa. 570, 381 A.2d 421 (1977).
- 6 Ark.—*City of Stuttgart v. Elms*, 220 Ark. 722, 249 S.W.2d 829 (1952).

Okla.—*Board of Com'rs of Caddo County v. Lawrence*, 1938 OK 173, 182 Okla. 485, 78 P.2d 669 (1938).
- 7 N.J.—*Harley v. Passaic County*, 121 N.J.L. 44, 1 A.2d 454 (N.J. Ct. Err. & App. 1938).

Tex.—*Jenkins v. Lipscomb County*, 375 S.W.2d 958 (Tex. Civ. App. Amarillo 1964).
- 8 N.J.—*Erwin v. Hudson County*, 136 N.J.L. 560, 57 A.2d 212 (N.J. Ct. Err. & App. 1948).
- 9 S.C.—*Matter of Ferguson*, 304 S.C. 216, 403 S.E.2d 628 (1991).
- 10 Ark.—*Gray v. Independence County*, 166 Ark. 502, 266 S.W. 465 (1924).

Minn.—*Martin v. Dodge County*, 146 Minn. 129, 178 N.W. 167 (1920).
- 11 La.—*State ex rel. Jones v. Tugwell*, 199 La. 12, 5 So. 2d 368 (1941).
- 12 N.Y.—*Pfingst v. State*, 57 A.D.2d 163, 393 N.Y.S.2d 803 (3d Dep't 1977).

